

EXHIBIT F

December 15, 2020

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

- - - - - X
THERESA SWEET, et al., on :
behalf of themselves and all : Case No.:
others similarly situated, : 19-cv-03674-WHA
Plaintiffs, :
vs. :
ELISABETH DEVOS, in her :
official capacity as :
Secretary of the United :
States Department of :
Education, et al., :
Defendants. :
- - - - - X

Remote Videotaped Deposition of MARK BROWN
Tuesday, December 15, 2020
10:03 a.m. (EST)

Job No. 332249
Pages: 1 - 250
Reported by: Dana C. Ryan, RPR, CRR

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34 to 37

<p style="text-align: right;">Page 34</p> <p>1 because things could go around for, you know,</p> <p>2 different parts of the organization, so I -- I</p> <p>3 won't say that none of the other organizations</p> <p>4 work with the borrower defense unit. I can only</p> <p>5 say that they report to Robin Minor.</p> <p>6 Q Okay. The BDU reports to Robin Minor?</p> <p>7 A That's correct.</p> <p>8 Q You say here -- we've talked about this</p> <p>9 a bit. You say here, Federal Student Aid is an</p> <p>10 apolitical, performance-based organization.</p> <p>11 Could you tell me a little bit more</p> <p>12 about what that means?</p> <p>13 A That means that we go across -- we</p> <p>14 don't change in or out based on political</p> <p>15 appointments; that we go across administrations.</p> <p>16 Much like the careers of public servants, we -- we</p> <p>17 don't attribute or work toward any political end.</p> <p>18 We work toward the execution of whatever</p> <p>19 legislation and authorities that we are given</p> <p>20 without regard to political affiliations.</p> <p>21 Q Okay. And on that subject, how is your</p> <p>22 compensation related to your performance?</p> <p>23 MR. HANCOCK: Objection: exceeds the</p> <p>24 scope of the court-ordered discovery.</p> <p>25 BY MS. TORCHIANA:</p>	<p style="text-align: right;">Page 36</p> <p>1 A When I started at Federal Student Aid?</p> <p>2 Q Well, as COO.</p> <p>3 A As COO?</p> <p>4 Q Uh-huh.</p> <p>5 A When I started at Federal Student Aid</p> <p>6 as COO, I was not clear on what the goals and</p> <p>7 objectives of Federal Student Aid was at the time,</p> <p>8 so I couldn't -- if you were to ask me what were</p> <p>9 they -- which I think you're asking me what were</p> <p>10 the goals and objectives of Federal Student Aid in</p> <p>11 March of 2019, I was not given a set of goals and</p> <p>12 objectives in March of 2019.</p> <p>13 Q Okay. So when you started -- so when</p> <p>14 you started, it was not clear to you that FSA had</p> <p>15 any goals?</p> <p>16 A That's not what I said. No, what I --</p> <p>17 I thought what you said was what were the goals</p> <p>18 presented to me when I started at my job as the</p> <p>19 chief operating officer at Federal Student Aid.</p> <p>20 Is that your question or --</p> <p>21 Q Yes. What were the goals and</p> <p>22 priorities that were presented to you that FSA</p> <p>23 had?</p> <p>24 A So my answer is that there were no</p> <p>25 goals or priorities presented to me when I started</p>
<p style="text-align: right;">Page 35</p> <p>1 Q Okay. How does your compensation</p> <p>2 related to processing borrower defense claims?</p> <p>3 MR. HANCOCK: Objection: exceeds the</p> <p>4 scope of the court-ordered discovery.</p> <p>5 BY MS. TORCHIANA:</p> <p>6 Q You can still answer unless your</p> <p>7 counsel instructs you not to.</p> <p>8 MR. HANCOCK: The witness may answer.</p> <p>9 THE WITNESS: I'm sorry. I couldn't</p> <p>10 hear the counsel. Say that again?</p> <p>11 MR. HANCOCK: The witness may answer.</p> <p>12 THE WITNESS: How does my -- could you</p> <p>13 repeat the question again? I'm sorry. I got</p> <p>14 caught up in the --</p> <p>15 BY MS. TORCHIANA:</p> <p>16 Q I said how -- how is your compensation</p> <p>17 related to processing borrower defense</p> <p>18 applications?</p> <p>19 A Well, my compensation is not related to</p> <p>20 processing borrower defense applications. I'm</p> <p>21 a -- I'm a -- there is no relationship that I'm</p> <p>22 aware of.</p> <p>23 Q Okay. And when you started at FSA in</p> <p>24 March 2018 -- 2019, sorry, what were your</p> <p>25 understandings of the goals and priorities of FSA?</p>	<p style="text-align: right;">Page 37</p> <p>1 the job as chief operating officer of Federal</p> <p>2 Student Aid. I -- I read the strategic plans of</p> <p>3 Federal Student Aid to -- to learn what the -- the</p> <p>4 goals and objectives had been across several years</p> <p>5 and found them to be broad.</p> <p>6 Q Okay. And did you -- when you started,</p> <p>7 did you meet with anyone, you know, for example,</p> <p>8 who onboarded you and explained to you the</p> <p>9 direction that FSA wanted to go in?</p> <p>10 A So I did not go through a formal</p> <p>11 onboarding process at Federal Student Aid. My --</p> <p>12 I simply started in March of 2019 and onboarding</p> <p>13 of myself.</p> <p>14 Q Okay. And what did you see as the</p> <p>15 goals and priorities of FSA?</p> <p>16 A I -- I believe we needed -- broadly, we</p> <p>17 needed to be a student center and responsive, and</p> <p>18 we needed to deliver on a large transformational</p> <p>19 objective which was called the next generation of</p> <p>20 Federal Student Aid.</p> <p>21 Q Okay. And when you joined, did you</p> <p>22 know that the Department of Education had not</p> <p>23 issued any borrower defense decisions since</p> <p>24 June 2018?</p> <p>25 A I knew what I had read in the media. I</p>

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<p style="text-align: right;">Page 46</p> <p>1 A I -- I don't know. As I said earlier,</p> <p>2 I would classify it as confusion because I -- I</p> <p>3 don't know why they -- why they thought that.</p> <p>4 Q Okay. So was the stoppage a concern</p> <p>5 when you joined or, you know, you . . .</p> <p>6 MR. HANCOCK: Objection. Potentially</p> <p>7 calls for deliberative information.</p> <p>8 MS. TORCHIANA: The witness can still</p> <p>9 answer.</p> <p>10 THE WITNESS: I was just trying to make</p> <p>11 sure I understood your question. I didn't know if</p> <p>12 you were through with your question. You said was</p> <p>13 this guidance a concern. For -- for me when I</p> <p>14 started?</p> <p>15 BY MS. TORCHIANA:</p> <p>16 Q When you started, was it a concern that</p> <p>17 no decisions had been issued?</p> <p>18 A When I started, the overall backlog in</p> <p>19 production, borrower defense processes and system</p> <p>20 were a concern to me because of -- of -- as I said</p> <p>21 earlier, the sheer volume and the fact that they</p> <p>22 were not moving.</p> <p>23 And, so, not just -- not just the fact</p> <p>24 that the decisions weren't going out, but that the</p> <p>25 methodology and other things needed to be known so</p>	<p style="text-align: right;">Page 48</p> <p>1 borrower defense cases would be -- would be</p> <p>2 managed by. That's when I use the term "fix it."</p> <p>3 To answer your question, that's what I mean,</p> <p>4 getting those -- getting those things in place so</p> <p>5 that this process could start moving.</p> <p>6 Q Okay. And do you know -- we'll discuss</p> <p>7 this more later, but do you know -- had there been</p> <p>8 any staff requests for the BDU before you joined?</p> <p>9 A I -- I actually don't know if there had</p> <p>10 been more staff requests for BDU before I joined</p> <p>11 because I would not have necessarily seen those.</p> <p>12 Q Okay. And how many -- how many staff</p> <p>13 people were working at the BDU when you joined?</p> <p>14 Do you remember?</p> <p>15 A I -- I don't know precisely, but it</p> <p>16 was -- in terms of attorneys, I would say probably</p> <p>17 10 to 12 at the most.</p> <p>18 Q Okay. And how many staff people did</p> <p>19 you estimate were needed to clear the backlog?</p> <p>20 A So estimate being the correct term,</p> <p>21 I -- I did not estimate. I -- I went to the</p> <p>22 borrower defense team and worked with them to see</p> <p>23 what they thought they needed based on the --</p> <p>24 based on the caseload. I can't tell you about</p> <p>25 their internal workings. I don't -- I don't know</p>
<p style="text-align: right;">Page 47</p> <p>1 that we could move on with the cases.</p> <p>2 So I would -- I would say borrower</p> <p>3 defense as a whole was a concern for me when I</p> <p>4 started in March of 2019.</p> <p>5 Q Okay. And did you take any -- what</p> <p>6 steps did you take about the backlog when you</p> <p>7 started?</p> <p>8 A Specifically, and through -- through</p> <p>9 the deliberation with the team, I concluded that</p> <p>10 we needed more people. Specifically, we needed</p> <p>11 more attorneys and we needed more financial</p> <p>12 resources if we were to fix the systems that --</p> <p>13 that manage, collect, case management systems that</p> <p>14 support the team. And, so, as the operating</p> <p>15 officer, I went about focusing on -- on that and</p> <p>16 fixed it in the next several months.</p> <p>17 Q Okay. So when you say "fixed it," what</p> <p>18 do you mean?</p> <p>19 A Hire attorneys, recruit, hire, bring on</p> <p>20 board attorneys so that there would be more hands</p> <p>21 doing the work.</p> <p>22 Q Okay. And do you know --</p> <p>23 A Secure the financial resources --</p> <p>24 secure the financial resources necessary to</p> <p>25 upgrade and fix the systems that those -- that</p>	<p style="text-align: right;">Page 49</p> <p>1 that, but collectively I do know we came out to a</p> <p>2 number of something around 60 -- we needed</p> <p>3 somewhere in that amount of attorneys in order to</p> <p>4 have people to adjudicate what was a growing</p> <p>5 backlog of cases, but I don't know how much -- I</p> <p>6 could not tell you today that that was some</p> <p>7 scientific equation. I can tell you it was the</p> <p>8 internal workers of BD team as you would go to</p> <p>9 your experts and ask about what do we need to --</p> <p>10 to tackle this issue.</p> <p>11 Q Okay. And did you make any requests to</p> <p>12 hire more staff for the BDU?</p> <p>13 A I did.</p> <p>14 Q Okay. And when -- when was the</p> <p>15 first -- or just how many times did you make --</p> <p>16 did you request?</p> <p>17 A I don't know. I don't know how many</p> <p>18 times I -- I made a request. I just know that my</p> <p>19 request was approved. I believe it was approved</p> <p>20 the first time I asked, so I don't know that there</p> <p>21 were more than one -- there was more than one time</p> <p>22 that I had to ask.</p> <p>23 Q And when was the first time you asked?</p> <p>24 A Shortly after taking over, but I -- but</p> <p>25 I can't tell you the exact time, but it was</p>

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<p style="text-align: right;">Page 50</p> <p>1 shortly after taking over, shortly after I had</p> <p>2 been educated on the process of borrower defense</p> <p>3 and -- and what we needed.</p> <p>4 Q Okay. And who -- who did you -- when</p> <p>5 you made a request to hire more staff, who did you</p> <p>6 make that request to?</p> <p>7 A I -- I made it through our HR system.</p> <p>8 I made it verbally to the under secretary, and I</p> <p>9 made it to the secretary verbally. And that's</p> <p>10 what I'm calling the request. In other words, it</p> <p>11 was all the same one; right? I was verbally</p> <p>12 saying I would like to hire more people in order</p> <p>13 to address the backlog.</p> <p>14 Q And do you have an estimate -- I know</p> <p>15 you said you don't remember, but do you have a</p> <p>16 rough estimate of when that was?</p> <p>17 A I do not other than what I just said,</p> <p>18 which is shortly after I took over.</p> <p>19 Q Okay. So sometime in the spring of</p> <p>20 2019?</p> <p>21 A Yes, and -- and I would just emphasize</p> <p>22 that that's rough. I don't have a -- I can't -- I</p> <p>23 can't tell you the exact -- I can't tell you the</p> <p>24 exact time. I just simply don't recall that exact</p> <p>25 time.</p>	<p style="text-align: right;">Page 52</p> <p>1 budget, and that normally drives hiring practices,</p> <p>2 but I don't know what the decisions were prior to</p> <p>3 March 2019.</p> <p>4 Q Okay. And do you know if there had</p> <p>5 been any requests for more staff?</p> <p>6 A I -- I do not know. I would have no</p> <p>7 firsthand knowledge of that. I'd only started</p> <p>8 working with issues related to borrower defense</p> <p>9 March of 2019. Prior to that, I did not have any</p> <p>10 relationship with the borrower defense unit.</p> <p>11 Q Okay. Before, when you were a senior</p> <p>12 advisor and working on human capital management</p> <p>13 which started in October of 2018, did you have</p> <p>14 any -- any work relating to hiring for the BDU?</p> <p>15 A Again, I was dealing with the speed at</p> <p>16 which we hire, not -- and there's a nuanced</p> <p>17 difference here, I think, in your question and</p> <p>18 what I did. My job is about process improvement.</p> <p>19 Why does it take long -- too long to hire a person</p> <p>20 into -- why did it take too long to recruit them</p> <p>21 or go find an expertise. I wasn't dealing with</p> <p>22 this section or that section, use this person or</p> <p>23 that person. I was looking to implement the</p> <p>24 processing improving, and I don't remember any</p> <p>25 conversations specifically about borrower defense.</p>
<p style="text-align: right;">Page 51</p> <p>1 Q Okay. And when you made those</p> <p>2 requests, how did -- for instance, how did the</p> <p>3 secretary respond?</p> <p>4 MR. HANCOCK: Objection: calls for</p> <p>5 deliberative information.</p> <p>6 MS. TORCHIANA: Are you instructing the</p> <p>7 witness not to answer or --</p> <p>8 MR. HANCOCK: I am.</p> <p>9 MS. TORCHIANA: Okay.</p> <p>10 BY MS. TORCHIANA:</p> <p>11 Q Okay. And, generally, how -- when you</p> <p>12 made those requests, what was the response?</p> <p>13 A Yes.</p> <p>14 Q Okay. And do you know before -- you</p> <p>15 said you don't remember, but what was your</p> <p>16 understanding of why -- why there wasn't more</p> <p>17 staff at the BDU?</p> <p>18 A I -- I didn't have an understanding of</p> <p>19 why. You know, historically, I just wouldn't -- I</p> <p>20 don't know. I wasn't -- you know, the borrower</p> <p>21 defense unit is several years old. They precede</p> <p>22 me by several years, and I just don't know what</p> <p>23 the -- you know, what all the deliberations were.</p> <p>24 I think, as with most federal agencies,</p> <p>25 you make decisions on resources and dollars and</p>	<p style="text-align: right;">Page 53</p> <p>1 Q Okay. So when you were a senior</p> <p>2 advisor before you were COO, you hadn't heard of</p> <p>3 any issues with staffing the borrower defense</p> <p>4 unit?</p> <p>5 A I don't -- I don't recall any</p> <p>6 discussions about borrower defense group with me,</p> <p>7 at least, before I became COO. Our -- our</p> <p>8 questions were about the process, as I just said,</p> <p>9 that's required for hiring, the process.</p> <p>10 Q So if you could turn to -- still in</p> <p>11 tab 25, if you could turn to paragraph 4 of your</p> <p>12 declaration.</p> <p>13 It says, Among FSA's responsibilities</p> <p>14 is to make decisions on applications.</p> <p>15 Could you tell me a bit about what that</p> <p>16 means in terms of your -- your role?</p> <p>17 A One -- one minute, please, if I could</p> <p>18 read it.</p> <p>19 (Witness reviews document.)</p> <p>20 So if -- if I could just make sure I</p> <p>21 understand your question, what that means as it</p> <p>22 pertains to my role as the chief operating</p> <p>23 officer?</p> <p>24 Q Uh-huh. Yes.</p> <p>25 A So the responsibilities of Federal</p>

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<p style="text-align: right;">Page 78</p> <p>1 heard of who instructed BDU to stop developing</p> <p>2 these memoranda?</p> <p>3 MR. HANCOCK: Objection: calls for</p> <p>4 speculation.</p> <p>5 THE WITNESS: I don't know, ma'am.</p> <p>6 BY MS. TORCHIANA:</p> <p>7 Q Okay. And did you ever hear of this</p> <p>8 decision or learn of it?</p> <p>9 A So in -- I -- I would not -- ma'am, I</p> <p>10 would not be able to tell you what -- you know,</p> <p>11 what was -- what was told in 2017. I -- I was not</p> <p>12 a part of the Department of Education in 2017.</p> <p>13 Q Okay. Okay. We can move on, then.</p> <p>14 If you could turn to Exhibit 7 in your</p> <p>15 hard copies.</p> <p>16 (Exhibit 7 referred to.)</p> <p>17 THE WITNESS: It says it's -- yes,</p> <p>18 Exhibit 7.</p> <p>19 BY MS. TORCHIANA:</p> <p>20 Q And are you familiar with this</p> <p>21 document?</p> <p>22 A (Witness reviews document.)</p> <p>23 I'm not familiar with the front part of</p> <p>24 this memorandum at -- at all, the letter. But I</p> <p>25 am aware of the secretary's signature on the back</p>	<p style="text-align: right;">Page 80</p> <p>1 A Not -- not to me, no. I -- I have</p> <p>2 the -- no, I can't think of anything that would be</p> <p>3 considered displeasure or -- if that's your</p> <p>4 question.</p> <p>5 Q Okay. Okay. And, you know, to get</p> <p>6 back to some general questions not about this</p> <p>7 document specifically -- we'll get back to it</p> <p>8 after.</p> <p>9 But before -- just turning back to</p> <p>10 something you've said, before you mentioned --</p> <p>11 when we were talking about performance metrics for</p> <p>12 the BDU, do you remember a couple of moments ago,</p> <p>13 how -- how do you assess -- you said you -- you</p> <p>14 installed performance metrics and, you know,</p> <p>15 you -- you were trying to install metrics at the</p> <p>16 department.</p> <p>17 How do you measure the output of the</p> <p>18 BDU unit?</p> <p>19 MR. HANCOCK: Objection: misstates</p> <p>20 testimony.</p> <p>21 BY MS. TORCHIANA:</p> <p>22 Q Okay. How do you -- do you assess the</p> <p>23 output of the BDU unit?</p> <p>24 A So with -- with all of Federal Student</p> <p>25 Aid metrics, they normally are production</p>
<p style="text-align: right;">Page 79</p> <p>1 that says "with extreme displeasure" because it</p> <p>2 was a -- it was a matter of a media article that I</p> <p>3 read.</p> <p>4 So that's my knowledge of this</p> <p>5 document.</p> <p>6 Q Okay. And what do you take that to</p> <p>7 mean, her -- her comment?</p> <p>8 MR. HANCOCK: Objection: exceeds the</p> <p>9 scope of the court-ordered discovery.</p> <p>10 BY MS. TORCHIANA:</p> <p>11 Q You can still answer.</p> <p>12 A I don't -- I don't know other than -- I</p> <p>13 read it in a media article. I don't know -- I</p> <p>14 don't know that -- I don't know.</p> <p>15 Q Okay. Do you know what -- what caused</p> <p>16 her extreme displeasure?</p> <p>17 A So I -- I think this was signed in</p> <p>18 2017, and -- and I was not a part of the</p> <p>19 Department of Education then, so, no, ma'am, I</p> <p>20 wasn't a part of this. I don't know.</p> <p>21 Q Okay. And when you -- since you've</p> <p>22 started, has the secretary expressed any</p> <p>23 displeasure with any aspects of the BDU's work?</p> <p>24 A With any aspects of the BDU work?</p> <p>25 Q Yes.</p>	<p style="text-align: right;">Page 81</p> <p>1 oriented. How many have -- so we are a</p> <p>2 performance-based organization, so we're a</p> <p>3 production organization.</p> <p>4 And, so, we routinely look at input,</p> <p>5 output and quality, and that would be the same for</p> <p>6 the BDU -- the BDU unit.</p> <p>7 Q Okay. And how do you assess the input</p> <p>8 and the output and the quality of the BDU unit's</p> <p>9 work?</p> <p>10 A So keeping in mind that -- I can just</p> <p>11 tell you generically, I'm not a borrower defense</p> <p>12 unit expert. What I can -- what I can tell you is</p> <p>13 that we look at how many claims that we have in</p> <p>14 and how many claims we have adjudicated either</p> <p>15 positively or -- or negatively or approved or</p> <p>16 disapproved, and at -- and how we're doing at the</p> <p>17 overall process of -- of getting those answers</p> <p>18 to -- to the students.</p> <p>19 So all of those elements of it would --</p> <p>20 would be at the macro level how the BDU unit is</p> <p>21 doing.</p> <p>22 Q Okay. And, so, when you came up with</p> <p>23 the fiscal year 2020 -- not you, but when the</p> <p>24 performance metric was set, did you have to</p> <p>25 approve it or sign off on it?</p>

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<p style="text-align: right;">Page 82</p> <p>1 A I signed off on all of the -- all of</p> <p>2 the metrics that go into the strategic plan and</p> <p>3 the annual plan, one of which is the metric. And</p> <p>4 in signing, I denote my confidence in the process</p> <p>5 of the development of those things.</p> <p>6 Q Okay. So would you ever agree to a</p> <p>7 performance metric that wasn't reasonable or that</p> <p>8 you think wasn't attainable?</p> <p>9 A So when I look at a performance metric</p> <p>10 in general, I look to see if we provided the</p> <p>11 resources necessary to achieve it. And if we</p> <p>12 provided the resources necessary to achieve it,</p> <p>13 then, you know, I would feel comfortable that it</p> <p>14 was reasonable.</p> <p>15 But you asked me if I would ever sign</p> <p>16 off on a performance metric that is not</p> <p>17 reasonable; am I -- am I correct?</p> <p>18 Q Yes.</p> <p>19 A I would not knowingly do so; however, I</p> <p>20 am not beyond flaw and -- and we have a large</p> <p>21 organization, and as I've said, they all have</p> <p>22 metrics. I have to build and trust the process</p> <p>23 that it would not bring me an unachievable metric,</p> <p>24 and so -- but it is not without flaw.</p> <p>25 So there -- there could be one that</p>	<p style="text-align: right;">Page 84</p> <p>1 Q Okay. And, so, when BDU came up with</p> <p>2 its performance metric, what deliberations did you</p> <p>3 have with the BDU? Did you meet with them about</p> <p>4 the performance metrics?</p> <p>5 MR. HANCOCK: Objection: calls for</p> <p>6 deliberative privileged information. I instruct</p> <p>7 the witness not to answer.</p> <p>8 BY MS. TORCHIANA:</p> <p>9 Q Okay. And how -- when you signed off</p> <p>10 on the performance metrics, how did you come to</p> <p>11 understand that that was an achievable goal? What</p> <p>12 told you that?</p> <p>13 A So what -- so if -- what told me that</p> <p>14 the goals were achievable?</p> <p>15 Q Uh-huh. Yes.</p> <p>16 A From my level -- and I have to explain</p> <p>17 this a little bit, though -- but from my level,</p> <p>18 I'm more concerned that the process is in place</p> <p>19 for the voices to be heard and the development to</p> <p>20 occur. And, so, I am spending my time on the</p> <p>21 process; in other words, are they from the ground</p> <p>22 up. Do subject matter experts have an opportunity</p> <p>23 to say something; are we, you know, not listening</p> <p>24 to any voices; or how do they look on a historical</p> <p>25 basis.</p>
<p style="text-align: right;">Page 83</p> <p>1 would have to be changed or adjusted if it were</p> <p>2 not -- if it were found to be, I think as you</p> <p>3 said, unrealistic.</p> <p>4 Q Okay. And how did you inform yourself</p> <p>5 that the BDU -- BDU unit's metrics were achievable</p> <p>6 or attainable?</p> <p>7 MR. HANCOCK: Objection: vague; and</p> <p>8 potentially calls for deliberative information.</p> <p>9 BY MS. TORCHIANA:</p> <p>10 Q You can still answer.</p> <p>11 A So we have metrics updates as I was --</p> <p>12 as I was saying, and -- and -- and a process by</p> <p>13 which they are developed. So the way I inform</p> <p>14 myself in general is by listening and having</p> <p>15 dialogue and asking questions that I think are</p> <p>16 challenging that would make those who develop and</p> <p>17 think deeply about them and looking at, you know,</p> <p>18 their responses and the history and seeing if</p> <p>19 together we can agree that this is something that</p> <p>20 can be done. And then ultimately they are</p> <p>21 established that way.</p> <p>22 So I -- I know that's not a one, two,</p> <p>23 three answer, but neither is the process. It is a</p> <p>24 very deliberative back-and-forth process that</p> <p>25 leads to what you are calling the metrics.</p>	<p style="text-align: right;">Page 85</p> <p>1 Those kinds of questions when you</p> <p>2 manage a large organization, you have to become</p> <p>3 confident that those will help bring out the best</p> <p>4 in those you manage.</p> <p>5 And, so, the way -- the reason I'm</p> <p>6 confident is because I spend an intense amount of</p> <p>7 time on the process to make sure the process is in</p> <p>8 place to deliver that. I don't -- I'm not a</p> <p>9 borrower defense attorney. I don't -- I can't</p> <p>10 tell you perhaps the intricacies that you're</p> <p>11 looking for in terms of all of those things that</p> <p>12 happen inside of the borrower defense unit, but I</p> <p>13 can tell you what process I had used.</p> <p>14 Q And who told you about the processes at</p> <p>15 the BDU?</p> <p>16 A Who told me about how borrower defense</p> <p>17 unit processes the work? Is that your question,</p> <p>18 ma'am?</p> <p>19 Q Sure.</p> <p>20 Well, you said you were listening to --</p> <p>21 when you set the performance metrics you were</p> <p>22 listening to different voices and it's a</p> <p>23 deliberative process.</p> <p>24 Who were you deliberating with to set</p> <p>25 those numbers?</p>

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<p style="text-align: right;">Page 90</p> <p>1 guess you would put it in a broad -- broad</p> <p>2 category of recruiting and -- and hiring. That's</p> <p>3 what we went about doing in a very aggressive way.</p> <p>4 Q Okay. And when did that start or when</p> <p>5 did you start doing that?</p> <p>6 A Again, I don't know when the very first</p> <p>7 hiring fair was and when the very first -- I -- I</p> <p>8 didn't -- I don't conduct the hiring fair myself.</p> <p>9 I don't physically go. I tell our experts to do</p> <p>10 that and I know that they had them. I don't</p> <p>11 actually go to the law school and visit and try</p> <p>12 and -- you know, we send -- we send people who are</p> <p>13 attorneys who know the business to go do that.</p> <p>14 I can tell you that shortly after my</p> <p>15 arrival, we began to try and buildup the number of</p> <p>16 attorneys after we were -- were given the approval</p> <p>17 to do so as I said earlier, and then all of those</p> <p>18 actions began to take place. It wasn't an</p> <p>19 overnight thing. It was -- as you would expect,</p> <p>20 you get ten, you get five more, you get seven</p> <p>21 more, you know, until you build up your personnel.</p> <p>22 Q And would you say before you joined,</p> <p>23 were there enough attorneys in the BDU unit?</p> <p>24 A So while I would not talk about --</p> <p>25 because I don't know because enough is -- enough</p>	<p style="text-align: right;">Page 92</p> <p>1 been issued since June 2018?</p> <p>2 MR. HANCOCK: Objection: asked and</p> <p>3 answered.</p> <p>4 THE WITNESS: I think --</p> <p>5 BY MS. TORCHIANA:</p> <p>6 Q You can answer.</p> <p>7 A Yeah, I think as I said before, I</p> <p>8 believe there was confusion, and so it -- my -- my</p> <p>9 understanding was that there was confusion.</p> <p>10 That's -- that's how I would classify it.</p> <p>11 Q Confusion about what?</p> <p>12 A The borrower defense unit believed that</p> <p>13 they had guidance to -- to not do so, policy</p> <p>14 guidance not -- not to do so, and had not done so</p> <p>15 after the Manriquez case, and I'm not certain that</p> <p>16 the -- at the time that the -- the department was</p> <p>17 under the understanding that they had provided</p> <p>18 that guidance.</p> <p>19 So if you're asking about that time</p> <p>20 frame when I initially took over in -- in March, I</p> <p>21 would classify it as confusion.</p> <p>22 Q Okay. So just looking at Exhibit 10,</p> <p>23 are you familiar with this testimony by Diane Auer</p> <p>24 Jones?</p> <p>25 A I am not familiar with this particular</p>
<p style="text-align: right;">Page 91</p> <p>1 would have to do with how many cases you had at</p> <p>2 the time, so I can't talk to you, ma'am, about</p> <p>3 anything prior to March 2019. I really don't know</p> <p>4 what -- I can tell you that, as I have said</p> <p>5 earlier, there were around 10 or 12 when I started</p> <p>6 in March of 2019. And that was not enough for the</p> <p>7 number of cases we had to get adjudicated and</p> <p>8 worked, and therefore we did all those things that</p> <p>9 I was just going through earlier.</p> <p>10 Q Okay. And did you -- did you have any</p> <p>11 sense of whether there were any requests to hire</p> <p>12 more attorneys before you joined?</p> <p>13 A As I said earlier, I -- I really don't</p> <p>14 know. I don't know.</p> <p>15 Q Okay. Okay. All right.</p> <p>16 We'll talk about the IT platform more</p> <p>17 later. I'd now like you to go to Exhibit 10.</p> <p>18 (Exhibit 10 referred to.)</p> <p>19 THE WITNESS: Yes, ma'am.</p> <p>20 BY MS. TORCHIANA:</p> <p>21 Q Okay. And just before we get into</p> <p>22 that, so when you started in March 2019, it sounds</p> <p>23 to me like that you made your issues -- or --</p> <p>24 or -- I guess when you started in March 2019, what</p> <p>25 was your understanding of why no decisions had</p>	<p style="text-align: right;">Page 93</p> <p>1 testimony. I know that Ms. Jones provided</p> <p>2 testimony, but I have not read this document that</p> <p>3 is -- that you have here as Exhibit 10.</p> <p>4 Q So it was in -- on May 22nd, 2019, so</p> <p>5 after you joined. Have you ever read through her</p> <p>6 testimony or looked at it?</p> <p>7 A I -- I don't believe so. At least I</p> <p>8 don't recall reading through this one.</p> <p>9 Q Okay. And at the top, could you turn</p> <p>10 to page 50?</p> <p>11 A Uh-huh.</p> <p>12 Q Okay. And at the top, could you read</p> <p>13 the testimony that starts -- so Ms. Jones says,</p> <p>14 There is not a policy. Could you read that</p> <p>15 sentence?</p> <p>16 A There is not a policy that prevents the</p> <p>17 review of claims. However, we are not able to</p> <p>18 determine the level of harm or the level of relief</p> <p>19 that a borrower should get because the methodology</p> <p>20 we use is now being challenged by the California</p> <p>21 courts. So we continue to process.</p> <p>22 Q Okay. And could you tell me what you</p> <p>23 think this means or explain that statement?</p> <p>24 MR. HANCOCK: Objection: Speculative.</p> <p>25 BY MS. TORCHIANA:</p>

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<p style="text-align: right;">Page 102 Page</p> <p>1 Ms. Jones was using the term because, as I said</p> <p>2 earlier, how someone uses the term, I think,</p> <p>3 differs.</p> <p>4 So I -- I can't tell you how Ms. Jones</p> <p>5 was using the term.</p> <p>6 Q Okay. And when you joined the</p> <p>7 department and, you know, no decisions had been</p> <p>8 made since June 2018, did you understand whether</p> <p>9 either Step 1 eligibility determinations -- were</p> <p>10 any of those proceeding?</p> <p>11 A Could you -- would you mind repeating</p> <p>12 the -- the last part of that question?</p> <p>13 Q When you started in March 2019 and</p> <p>14 going forward, did -- no decisions had been issued</p> <p>15 since June 2018, did you understand whether any</p> <p>16 Step 1 decisions were continuing, so as you</p> <p>17 described it, eligibility?</p> <p>18 A Step 1, to my knowledge, never stopped.</p> <p>19 Q Okay.</p> <p>20 A Those -- that part which we now call</p> <p>21 Step 1, we're talking about it as Step 1, to my</p> <p>22 knowledge that had never stopped.</p> <p>23 Q Okay. And -- and how -- was that being</p> <p>24 reported to you?</p> <p>25 A So the metrics and the measurements and</p>	<p style="text-align: right;">Page 104 Page</p> <p>1 claims. However, we -- we're not able to</p> <p>2 adjudicate as many as we would like because we</p> <p>3 don't have enough resources.</p> <p>4 And, so, when you say how do I know it</p> <p>5 was continuing, they -- they told me that they</p> <p>6 were continuing to adjudicate claims. That didn't</p> <p>7 automatically get boiled down to a metric that I</p> <p>8 was getting automatic weekly updates on. It took</p> <p>9 a while, some time for that to come about. And I</p> <p>10 don't know exactly when that came about, but it</p> <p>11 didn't happen immediately.</p> <p>12 But that's -- that's how I knew that</p> <p>13 that's what we were doing.</p> <p>14 Q Okay. And as part of your performance</p> <p>15 metrics, so you -- do you know how many claims</p> <p>16 have gone through Step 1 eligibility or have been</p> <p>17 processed at Step 1?</p> <p>18 Was that ever reported?</p> <p>19 A Today you mean or --</p> <p>20 Q At any point.</p> <p>21 A So, yes, at some -- at some point</p> <p>22 across during the process of metric building and</p> <p>23 measurements, I would have an indication of how</p> <p>24 many claims had been processed and adjudicated and</p> <p>25 if we were at a point where notifications were</p>
<p style="text-align: right;">Page 103 Page</p> <p>1 all the things that we've been talking about</p> <p>2 didn't exist on day one in March to my knowledge,</p> <p>3 and -- and nothing was being reported to me other</p> <p>4 than I was aware that we only had 10 to 12</p> <p>5 attorneys, as I said before, and the numbers were</p> <p>6 not that large of the number of claims we were</p> <p>7 able to even get through Step 1 because BD claims</p> <p>8 were growing, and as I've said earlier, we simply</p> <p>9 did not have enough of those two things I</p> <p>10 mentioned, attorneys and the resources against the</p> <p>11 systems necessary.</p> <p>12 Q Okay. And so how did you know that</p> <p>13 Step 1 was continuing?</p> <p>14 A So in March I started an education --</p> <p>15 Q Not just in March, but, you know, when</p> <p>16 you started and moving forward.</p> <p>17 How about from March when you started</p> <p>18 until December of 2019?</p> <p>19 A How did I -- how did I know that Step 1</p> <p>20 was continuing?</p> <p>21 Q Uh-huh. Yes.</p> <p>22 A So -- and I know -- I believe I</p> <p>23 mentioned that when I first started in March, the</p> <p>24 BD team immersed me into what they were doing.</p> <p>25 And, so, part of that is we are adjudicating</p>	<p style="text-align: right;">Page 105 Page</p> <p>1 going out, how many notifications had been sent.</p> <p>2 That would be a part of the metric.</p> <p>3 Q Okay.</p> <p>4 A Could I ask, ma'am, for a -- a</p> <p>5 five-minute break?</p> <p>6 Q Sure.</p> <p>7 MR. HANCOCK: And, Claire, this might</p> <p>8 be a good time to just talk generally about lunch</p> <p>9 break. It's now 12:43 here on the East Coast,</p> <p>10 so --</p> <p>11 THE VIDEOGRAPHER: Do you want to have</p> <p>12 this conversation off the record?</p> <p>13 MR. HANCOCK: Oh, sure.</p> <p>14 THE VIDEOGRAPHER: We're now off the</p> <p>15 record. The time is 17:43 UTC time.</p> <p>16 (Lunch recess -- 12:43 p.m.)</p> <p>17 (After lunch recess -- 1:18 p.m.)</p> <p>18 THE VIDEOGRAPHER: Okay. We're now</p> <p>19 back on the record. The time is 18:18 UTC.</p> <p>20 BY MS. TORCHIANA:</p> <p>21 Q Okay. So, Mr. Brown, we were just</p> <p>22 talking about the Calvillo or the Manriquez</p> <p>23 injunction and what you understood the effect of</p> <p>24 it to be. You mentioned that there was confusion</p> <p>25 within the BDU unit and the BDU unit believed that</p>

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<p style="text-align: right;">Page 106 Page</p> <p>1 it -- that they couldn't issue any decisions.</p> <p>2 Do you know -- where would you say --</p> <p>3 all right. Let me rephrase it.</p> <p>4 How did you seek clarification about</p> <p>5 this confusion?</p> <p>6 A So I -- I wouldn't say -- and I</p> <p>7 don't -- I don't believe I said that there was</p> <p>8 confusion within the BD unit. I think what I said</p> <p>9 was that there was confusion, meaning the BD unit</p> <p>10 believed they had guidance or policy not to go</p> <p>11 further with decisions, meaning to send them out.</p> <p>12 When I asked the department if, in</p> <p>13 fact, that was the case, the answer I got back was</p> <p>14 that they didn't believe they had told the BD unit</p> <p>15 that.</p> <p>16 That, it's those two positions early on</p> <p>17 in my time, that I define as confusion.</p> <p>18 Q Okay. So who did you ask from the</p> <p>19 Department of Education about -- about this</p> <p>20 confusion? Who did you talk to?</p> <p>21 A I -- I spoke with Under Secretary Jones</p> <p>22 to get clarification on what the -- you know, what</p> <p>23 had been told to the BD unit.</p> <p>24 Q Okay. And what did she tell you?</p> <p>25 A She responded at the time. This is in</p>	<p style="text-align: right;">Page 108 Page</p> <p>1 couldn't issue decisions?</p> <p>2 A No. No, no, I -- maybe I don't</p> <p>3 understand -- understand you. Ms. -- I asked the</p> <p>4 BD unit as we were going through that educational</p> <p>5 process, you know, what we were doing, why were</p> <p>6 decisions not going out.</p> <p>7 The BD unit believed that after the</p> <p>8 Manriquez case decision that they were only to</p> <p>9 adjudicate cases; they were not to send out any --</p> <p>10 any answers. They believed that was the guidance</p> <p>11 that they had.</p> <p>12 I asked --</p> <p>13 Q Did you seek clarify -- did you seek</p> <p>14 clarification about why they believed that was the</p> <p>15 guidance that had been issued?</p> <p>16 A Yes. I -- I asked the under secretary</p> <p>17 why was the BD unit not sending out decisions.</p> <p>18 The initial answer or response, if you go back,</p> <p>19 was I didn't know that the BD unit was not sending</p> <p>20 out decisions. That was the initial answer when I</p> <p>21 first -- when I first started in March/April time</p> <p>22 frame looking into this.</p> <p>23 Q Okay. And did you ask anyone in the</p> <p>24 BDU why they thought they'd received that</p> <p>25 guidance?</p>
<p style="text-align: right;">Page 107 Page</p> <p>1 the March/April time frame. I didn't know that</p> <p>2 the BD unit was not sending out -- or I'm not sure</p> <p>3 why the BD unit is not sending out decisions.</p> <p>4 That was the initial response, and this was a</p> <p>5 verbal conversation. I don't have this in -- in</p> <p>6 any form of documentation.</p> <p>7 Q So she -- she was the one who said to</p> <p>8 you she wasn't sure why the BDU -- the BDU unit</p> <p>9 wasn't issuing decisions?</p> <p>10 A Initially.</p> <p>11 Q Okay. And did you seek any</p> <p>12 clarification?</p> <p>13 A I -- I did. At some point, and I -- I</p> <p>14 cannot specify for you the exact point because I</p> <p>15 don't recall the exact point, but at some point it</p> <p>16 moves to the point of a new methodology was being</p> <p>17 developed, and once that new methodology was</p> <p>18 developed, it would allow for the issuance of</p> <p>19 both -- on -- of decisions, meaning both approval</p> <p>20 and denials.</p> <p>21 Q Okay. That wasn't quite my question in</p> <p>22 terms of -- so Ms. Diane Auer Jones told you the</p> <p>23 BDU unit told you they couldn't issue decisions.</p> <p>24 Did you seek clarification within the</p> <p>25 BDU unit asking why they thought that they</p>	<p style="text-align: right;">Page 109 Page</p> <p>1 MR. HANCOCK: Objection: asked and</p> <p>2 answered.</p> <p>3 BY MS. TORCHIANA:</p> <p>4 Q I think he mentioned -- or you can go</p> <p>5 ahead and answer.</p> <p>6 A No, it's -- as I had previously stated,</p> <p>7 the BD unit believed, which I believe gets to your</p> <p>8 why, that after the Manriquez case decision that</p> <p>9 they were not to send out any notifications. They</p> <p>10 were simply to continue adjudicating cases.</p> <p>11 Q And did you talk to anyone in the BDU</p> <p>12 unit about that belief?</p> <p>13 A I -- no, I don't believe that I -- I</p> <p>14 didn't go any further into -- any further in the</p> <p>15 history of it because it was answer right -- the</p> <p>16 answer is they weren't sending any out because</p> <p>17 they believed they weren't supposed to at the</p> <p>18 time.</p> <p>19 Q And, so, did you do anything to clarify</p> <p>20 that confusion?</p> <p>21 A Yes. I stated earlier I asked the</p> <p>22 under secretary, and the initial reply I got back</p> <p>23 was I didn't -- I didn't know the BD unit was not</p> <p>24 sending out, but that was only the initial reply</p> <p>25 that I got back.</p>

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110 to 113

<p style="text-align: right;">Page 110 Page</p> <p>1 Later on -- and I can't give you the</p> <p>2 exact time of this -- it was decided that we would</p> <p>3 continue that same posture while the new</p> <p>4 methodology was being developed, and that once the</p> <p>5 new methodology would be developed, we would be</p> <p>6 going forward with all types, you know, both the</p> <p>7 adjudications and the notifications.</p> <p>8 Q Okay. When did you decide -- when you</p> <p>9 say you decided to continue that posture, what do</p> <p>10 you mean?</p> <p>11 A Not that I decided; that the department</p> <p>12 at that point decided that we would continue the</p> <p>13 same posture that we were in and not issue</p> <p>14 notifications but continue to do adjudications</p> <p>15 until the point at which the methodology was</p> <p>16 completed, and then that -- and then we would</p> <p>17 begin doing both.</p> <p>18 Q Okay. And who made that decision?</p> <p>19 A I don't know exactly. I can tell you</p> <p>20 that that was a decision communicated to me</p> <p>21 through the under secretary. I don't know that I</p> <p>22 could tell you, you know, if that was her sole</p> <p>23 decision or if there was some other parties</p> <p>24 involved.</p> <p>25 I would not know that.</p>	<p style="text-align: right;">Page 112 Page</p> <p>1 was developed, I don't -- I don't know. Only I</p> <p>2 can relate to you what was communicated to me.</p> <p>3 Q Okay. If you can turn back to your</p> <p>4 declaration which is -- it should be behind</p> <p>5 Exhibit 25 -- behind tab 25, sorry.</p> <p>6 A I have it.</p> <p>7 Q Okay. And we'll start at -- we'll get</p> <p>8 back to paragraph 5. So, you know, you say, On</p> <p>9 December 10th, 2019, the department issued a</p> <p>10 policy statement setting forth a tiered relief</p> <p>11 methodology.</p> <p>12 So who -- who came up with this tiered</p> <p>13 relief methodology?</p> <p>14 A Who came up with it?</p> <p>15 Q Yes.</p> <p>16 A So what I would -- what I would say is</p> <p>17 that the -- the methodology itself is determined</p> <p>18 by the department. In terms of the building of</p> <p>19 it, if that answers your who that came up with it,</p> <p>20 I'm sure like most other things, it was collective</p> <p>21 effort of providing information to help decision</p> <p>22 makers, but the methodology is a statement of</p> <p>23 policy of the secretary's, and so it would not be</p> <p>24 inside of Federal Student Aid.</p> <p>25 Q Okay. So who would you say was the</p>
<p style="text-align: right;">Page 111 Page</p> <p>1 Q Okay. And how was that communicated to</p> <p>2 you?</p> <p>3 When you say the under secretary</p> <p>4 communicated that to you, how was that</p> <p>5 communicated? Was it -- in what form?</p> <p>6 A Yeah, to -- to my knowledge it was</p> <p>7 verbal. I don't -- I don't know that there's a</p> <p>8 document that says effective this date. My</p> <p>9 recollection of that is just that it was given to</p> <p>10 me verbally.</p> <p>11 Q Okay. So would you say there was a</p> <p>12 policy not to issue any decisions until a new</p> <p>13 relief methodology was in place?</p> <p>14 A I don't know if I would go as far as to</p> <p>15 define it as policy, but I would certainly go far</p> <p>16 enough to call it a set path going forward.</p> <p>17 Q Okay. And that guidance was coming</p> <p>18 from the Office of the Under Secretary?</p> <p>19 MR. HANCOCK: Objection: asked and</p> <p>20 answered.</p> <p>21 BY MS. TORCHIANA:</p> <p>22 Q Okay. You can still answer it.</p> <p>23 A Yeah -- yes, ma'am, as I just -- as I</p> <p>24 just stated. That's who it was communicated to me</p> <p>25 from. Exactly where it was coming from and how it</p>	<p style="text-align: right;">Page 113 Page</p> <p>1 main decision maker then in coming up with the</p> <p>2 tiered relief methodology?</p> <p>3 A I -- I wouldn't say that because I --</p> <p>4 you know, I don't know how to -- I don't know how</p> <p>5 to measure what you mean by who was the main</p> <p>6 decision maker. The methodology is a statement of</p> <p>7 policy, so it comes from the department. And then</p> <p>8 our job is to execute that -- that policy. Who --</p> <p>9 who weighed in the most or the least, I -- or</p> <p>10 made, to use your term, I -- I don't know that</p> <p>11 name.</p> <p>12 Q Okay. And when was it decided to</p> <p>13 develop on this tiered relief methodology?</p> <p>14 A I don't know exactly when it was</p> <p>15 decided. I know that we started using that. I</p> <p>16 can tell you that. But exactly when it was</p> <p>17 decided, I -- I don't know.</p> <p>18 Q Okay. And when you -- let's say in</p> <p>19 March 2019 when you joined the department, had</p> <p>20 you -- was there any development of this</p> <p>21 alternative methodology?</p> <p>22 MR. HANCOCK: Objection: misstates</p> <p>23 testimony.</p> <p>24 THE WITNESS: I don't know if I</p> <p>25 understand that question. I'm not sure I</p>

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<p style="text-align: right;">Page 114 Page</p> <p>1 understand your question.</p> <p>2 BY MS. TORCHIANA:</p> <p>3 Q My question was when did this tiered</p> <p>4 methodology start being developed, and you say you</p> <p>5 don't remember. So, you know, in the spring of</p> <p>6 2019 when you started, do you remember any</p> <p>7 discussions about this new tiered relief</p> <p>8 methodology?</p> <p>9 A I don't.</p> <p>10 Q Okay. And when do discussions about</p> <p>11 this tiered relief methodology begin?</p> <p>12 A I don't know when the -- again, I don't</p> <p>13 know when the discussions or the decisions, the</p> <p>14 inner workings of what would be the policy making,</p> <p>15 I can't tell you exactly when that began.</p> <p>16 What I can -- what I can tell you is</p> <p>17 that in -- in March, I wasn't aware of it if</p> <p>18 that's your -- if that's your question.</p> <p>19 Q Okay. What about later on, let's</p> <p>20 say -- when did you become aware that a tiered</p> <p>21 methodology was being developed?</p> <p>22 A So what -- what I know is that as we</p> <p>23 got into the April/May time frame -- and I don't</p> <p>24 remember precisely that time frame, but somewhere</p> <p>25 within there -- the answer to our question of</p>	<p style="text-align: right;">Page 116 Page</p> <p>1 because it was key to us moving forward in the</p> <p>2 borrower defense.</p> <p>3 Q Okay. And what was your involvement in</p> <p>4 developing this tiered relief methodology?</p> <p>5 A So my personal involvement would have</p> <p>6 been very limited. If you mean "my", the</p> <p>7 organization of Federal Student Aid, I would have</p> <p>8 a slightly different answer.</p> <p>9 Q When you say it was very limited, what</p> <p>10 did you do as part of developing this tiered</p> <p>11 relief methodology?</p> <p>12 A Little -- little to nothing. When I</p> <p>13 say very limited, I am -- I'm referring to the</p> <p>14 fact that I'm the chief operating officer at</p> <p>15 Federal Student Aid, so anything that Federal</p> <p>16 Student Aid might provide data for or those kind</p> <p>17 of things, I can't totally detach myself from it</p> <p>18 because they are -- that is my organization.</p> <p>19 But in terms of my personal</p> <p>20 involvement, that -- that's not what I do. I</p> <p>21 would not have personally been sitting with</p> <p>22 someone developing methodology.</p> <p>23 Q Okay. And who within FSA was working</p> <p>24 on it?</p> <p>25 A So while I can't -- I wouldn't be able</p>
<p style="text-align: right;">Page 115 Page</p> <p>1 moving forward with notification was related to</p> <p>2 the fact that a methodology was being developed.</p> <p>3 But I'm not telling you that it started</p> <p>4 then or it started before then or later because I</p> <p>5 don't know other than at that point I became aware</p> <p>6 that it was being developed. I can't give you</p> <p>7 the -- I can't give you the parameters of when it</p> <p>8 started or when it ended or anything like that</p> <p>9 other than I -- other than I know it was being</p> <p>10 developed.</p> <p>11 Q Okay. And did you ever discuss the</p> <p>12 development of the tiered relief methodology with</p> <p>13 Diane Auer Jones?</p> <p>14 A Did I ever discuss that we were -- that</p> <p>15 she was -- that she and the department</p> <p>16 collectively were working on this methodology?</p> <p>17 Q Yes.</p> <p>18 A Yes, I -- I knew that they were working</p> <p>19 on it. I -- I did know that. After that time</p> <p>20 frame, after that discussion, I -- I knew that.</p> <p>21 Q Okay. And how was that communicated to</p> <p>22 you? How -- how -- what form did those</p> <p>23 discussions take?</p> <p>24 A Just that, discussions in meetings, and</p> <p>25 the reason it was -- would have been discussed is</p>	<p style="text-align: right;">Page 117 Page</p> <p>1 to give you the details of who, I can tell you</p> <p>2 that we have a policy -- the liaison office and we</p> <p>3 have data people who pull data out of systems and</p> <p>4 run algorithms and those kind of things. They</p> <p>5 provide the decision support to the policy makers</p> <p>6 to help them understand kind of the -- the numbers</p> <p>7 and the data and those kind of things that they're</p> <p>8 trying to make decisions on.</p> <p>9 So I could tell you organizationally we</p> <p>10 have sections that do that. We have data</p> <p>11 analytics; we have data scientists, if you will,</p> <p>12 that do those kinds of things, and policy liaisons</p> <p>13 which do that. And they would have been involved</p> <p>14 with running various programs and pulling data to</p> <p>15 be supportive of that effort.</p> <p>16 Q Okay. And how many staff within FSA</p> <p>17 would you say were working on developing this</p> <p>18 partial relief methodology?</p> <p>19 A I would not know. This is a dynamic --</p> <p>20 dynamic kind of thing. You know, today I need one</p> <p>21 person; tomorrow I need two; I need a couple of</p> <p>22 hours on the phone.</p> <p>23 It's just -- it's very dynamic, and I</p> <p>24 could not associate it with a particular number of</p> <p>25 persons or times, nor do I believe we accounted</p>

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<p style="text-align: right;">Page 118 Page</p> <p>1 for it in any kind of way.</p> <p>2 So I would not want to speculate. I</p> <p>3 don't know, ma'am.</p> <p>4 Q Okay. Was it time-consuming for FSA to</p> <p>5 developed this tiered relief methodology?</p> <p>6 A So by "time-consuming," do you mean</p> <p>7 that we had to put some time into it, or do you</p> <p>8 mean that it took an inordinate amount of time?</p> <p>9 Can you help me understand what you</p> <p>10 mean by that?</p> <p>11 Q Did it take a lot of time for staff</p> <p>12 members at FSA to develop this tiered relief</p> <p>13 methodology? Was it something that -- how much</p> <p>14 time would you say staff spent on developing this?</p> <p>15 MR. HANCOCK: Objection: misstates</p> <p>16 testimony.</p> <p>17 MS. TORCHIANA: You can still answer.</p> <p>18 THE WITNESS: Yeah, I wouldn't want to</p> <p>19 give you a specific amount of time. I don't know.</p> <p>20 I could look back and see if we had written that</p> <p>21 down somewhere, but, you know, I couldn't -- I</p> <p>22 couldn't tell you exactly how much time was spent</p> <p>23 on it, not -- not off the top of my head.</p> <p>24 BY MS. TORCHIANA:</p> <p>25 Q Okay. And did you have a sense that it</p>	<p style="text-align: right;">Page 120 Page</p> <p>1 relief methodology?</p> <p>2 MR. HANCOCK: Objection: misstates</p> <p>3 testimony.</p> <p>4 THE WITNESS: Could you say it again,</p> <p>5 ma'am? I'm sorry. I didn't understand.</p> <p>6 BY MS. TORCHIANA:</p> <p>7 Q I said, what resources were required to</p> <p>8 develop this methodology within FSA?</p> <p>9 So you mentioned staff . . .</p> <p>10 A So we have people that pull out data,</p> <p>11 do data analytics and metrics. We have people</p> <p>12 who -- who I would call policy liaison folks who</p> <p>13 help -- help understand what -- what the policy</p> <p>14 (audio distortion) locations of them are. So</p> <p>15 within their job jar would be to support this kind</p> <p>16 of effort.</p> <p>17 But if you're asking for me to quantify</p> <p>18 it -- or are you asking for me just to give you</p> <p>19 those organizational elements within FSA?</p> <p>20 Q What were the organizational elements</p> <p>21 within FSA that were needed?</p> <p>22 A Data analytics and policy liaison.</p> <p>23 Q Okay. Could you explain to me how this</p> <p>24 partial relief methodology -- how it works?</p> <p>25 MR. HANCOCK: Objection: exceeds the</p>
<p style="text-align: right;">Page 119 Page</p> <p>1 was taking a lot of time for FSA to -- to develop</p> <p>2 this partial relief methodology?</p> <p>3 MR. HANCOCK: Objection: misstates</p> <p>4 testimony.</p> <p>5 THE WITNESS: So the methodology is</p> <p>6 developed by the department. The methodology is a</p> <p>7 statement of policy, and so the -- the role of</p> <p>8 FSA, and -- and by association my role, is to</p> <p>9 provide data and analytics for the decision</p> <p>10 makers. But we don't develop that policy document</p> <p>11 which -- which you referred to as a methodology.</p> <p>12 BY MS. TORCHIANA:</p> <p>13 Q So within FSA, what staff was working</p> <p>14 on developing this methodology?</p> <p>15 A So, again, I cannot give you names. I</p> <p>16 don't know all of the names. I can tell you we</p> <p>17 have a policy liaison office and that only has a</p> <p>18 couple of people in it. And we have data</p> <p>19 analytics, people who pull data. That could have</p> <p>20 been one or -- you know, one or two people that</p> <p>21 got that request and worked that particular</p> <p>22 request, but it would have been a combination of</p> <p>23 those kind of folks.</p> <p>24 Q Okay. And -- and what resources would</p> <p>25 you say were required to develop this partial</p>	<p style="text-align: right;">Page 121 Page</p> <p>1 scope of the court-ordered discovery.</p> <p>2 BY MS. TORCHIANA:</p> <p>3 Q Okay. Okay. And then -- what is your</p> <p>4 understanding of why loan relief tied to earnings</p> <p>5 is a relevant measure, if relevant?</p> <p>6 A So I would -- would tell you that</p> <p>7 that's not something I would have a deep</p> <p>8 understanding of. It is -- that's essentially, I</p> <p>9 think, the policy that you're reading from of how</p> <p>10 the methodology works, and -- and while we do have</p> <p>11 technicians that compute it, the how or -- or why</p> <p>12 of the policy would not be within my -- kind of my</p> <p>13 statement of work.</p> <p>14 Q Okay. Okay. And then if we could go</p> <p>15 to paragraph 6, could you just read the -- the</p> <p>16 first sentence for me?</p> <p>17 A After adoption of the tiered relief</p> <p>18 methodology discussed in the policy statement, FSA</p> <p>19 resumed issuing decisions on pending borrower</p> <p>20 defense claims. If FSA determined that a borrower</p> <p>21 had submitted an application which met the</p> <p>22 requirements for a borrower defense discharge, FSA</p> <p>23 used the methodology described in the policy</p> <p>24 statement to determine the amount of relief that</p> <p>25 would be provided to the borrower.</p>

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<p style="text-align: right;">Page 170 Page</p> <p>1 here.</p> <p>2 Q Okay. We're going to switch tacks a</p> <p>3 little bit and talk about something you mentioned</p> <p>4 earlier in this declaration. Sorry to keep going</p> <p>5 back and forth, but if you go to paragraph 18, you</p> <p>6 mention that since December 2019, borrower defense</p> <p>7 applicants whose applications are found ineligible</p> <p>8 receive one of four form ineligibility letters.</p> <p>9 Do you know who drafted these form</p> <p>10 ineligibility letters?</p> <p>11 A So the ineligibility letters are -- are</p> <p>12 drafted. Do you mean -- and, again, if I can just</p> <p>13 make sure that I -- that we're using the words the</p> <p>14 same way. So the traditional draft, who is the</p> <p>15 first person that -- that puts the words on a page</p> <p>16 and -- and asks everyone else what they think</p> <p>17 about it.</p> <p>18 That -- drafts would begin in Federal</p> <p>19 Student Aid inside of our borrower defense unit</p> <p>20 and of our folks, drafts would begin there. I'm</p> <p>21 sure they were created there.</p> <p>22 Q Okay. And who would have drafted them?</p> <p>23 A It would have come from our policy</p> <p>24 liaison and borrower defense units.</p> <p>25 Q And who is your policy liaison?</p>	<p style="text-align: right;">Page 172 Page</p> <p>1 if they have a question and they go ask somebody</p> <p>2 that question, it could be anybody in the</p> <p>3 organization, right. They may have to ask is this</p> <p>4 the appropriate line for this or that, and they</p> <p>5 may want to talk to someone on the loan servicing</p> <p>6 side or one on the technical writing side.</p> <p>7 They -- they're working, so they are -- they are</p> <p>8 bringing their files together to produce a draft.</p> <p>9 I couldn't tell you everybody they</p> <p>10 talked to. I'm just saying that it's possible.</p> <p>11 Q And were you involved at all in</p> <p>12 drafting these form ineligibility letters?</p> <p>13 A So when you say "involved," you mean</p> <p>14 that I knew what was going on? That I saw the</p> <p>15 staffing process? Or do you mean that I was</p> <p>16 helping to draft it?</p> <p>17 Q Any and all of those things.</p> <p>18 How were you involved in drafting these</p> <p>19 letters?</p> <p>20 A I was not helping to draft the letter.</p> <p>21 I was not helping to write what words would go on</p> <p>22 the letter. I would not be the right person to do</p> <p>23 that.</p> <p>24 What I -- what I was doing was making</p> <p>25 sure that we had an appropriate staffing process</p>
<p style="text-align: right;">Page 171 Page</p> <p>1 A So it's a team of folks. The -- the</p> <p>2 leader on the -- in the policy liaison area is a</p> <p>3 Mr. Ian Foss, and the leader on the borrower</p> <p>4 defense team I believe is Colleen Nevin.</p> <p>5 And, so, something like preparing what</p> <p>6 words should go on a form, which is preparing a</p> <p>7 draft, would be done collectively between those</p> <p>8 two parts of the organization.</p> <p>9 Q Okay. So would you say Ian Foss helped</p> <p>10 draft these form letters?</p> <p>11 A Yes, that's what I'm saying. These</p> <p>12 letters have been done collaboratively between</p> <p>13 those two units, one providing --</p> <p>14 Q Anybody else?</p> <p>15 A Inside of FSA? I can't say that</p> <p>16 there's no one else, but from an organizational</p> <p>17 perspective, it would be those two parts of the</p> <p>18 organization. It could be several other people</p> <p>19 that are involved that have questions or those</p> <p>20 kind of things, but those two parts of the</p> <p>21 organization would be involved.</p> <p>22 Q Okay. When you say could be several</p> <p>23 other people, who do you think those several other</p> <p>24 people are?</p> <p>25 A So what I'm trying to allude to here is</p>	<p style="text-align: right;">Page 173 Page</p> <p>1 and that the controls were in place to make sure</p> <p>2 the right people saw the letter -- letters before</p> <p>3 they go final.</p> <p>4 I was very well aware of that.</p> <p>5 Q Okay. And who would you say were the</p> <p>6 right people to review those letters before they</p> <p>7 went out?</p> <p>8 A The letters are a statement of policy,</p> <p>9 and -- and so the final letters would have to be</p> <p>10 gone through the policy outline of the Department</p> <p>11 of Education and -- and that might be a general</p> <p>12 counsel review and an ultimate approval through</p> <p>13 the under secretary.</p> <p>14 Q Okay. So could you -- so would that be</p> <p>15 Diane Auer Jones would have reviewed them before</p> <p>16 they went out?</p> <p>17 A Yes, if it was a poll- -- it's the</p> <p>18 policy letter, she or -- now, I don't work inside</p> <p>19 of her office, so she may have protocols</p> <p>20 established where someone else in the office sees</p> <p>21 it. So I could not say it was absolutely her that</p> <p>22 saw every letter.</p> <p>23 I could tell you the Office of the</p> <p>24 Under Secretary would be a part of the staffing</p> <p>25 process.</p>

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174 to 177

<p style="text-align: right;">Page 174 Page</p> <p>1 Q Okay. And what was the process for</p> <p>2 drafting these letters?</p> <p>3 A Inside of Federal Student Aid?</p> <p>4 Q Yeah.</p> <p>5 A I can -- I can tell you that -- I can</p> <p>6 tell you the offices that worked to put</p> <p>7 together -- put together these statements and then</p> <p>8 put together a staff -- what I would call a staff</p> <p>9 summary sheet for it to be seen by the relevant</p> <p>10 parties and sent outside Federal Student Aid.</p> <p>11 That's -- that's essentially the process.</p> <p>12 So the borrower defense unit, knowing</p> <p>13 what the law requires in order for a person to</p> <p>14 come out and come back in with a -- with a claim</p> <p>15 and then a policy team working to get that on</p> <p>16 paper and get it approved.</p> <p>17 Q Do you know when that process</p> <p>18 started -- when the process started for drafting</p> <p>19 these letters?</p> <p>20 A No, I don't, and I don't believe it's a</p> <p>21 specific time because there are four letters, and</p> <p>22 they don't all begin or end at the same time. I</p> <p>23 think they evolved into -- into having four</p> <p>24 letters.</p> <p>25 So to answer your questions, no, I</p>	<p style="text-align: right;">Page 176 Page</p> <p>1 of these letters were produced?</p> <p>2 A I do not.</p> <p>3 Q Okay. So if you could turn to</p> <p>4 Exhibit 13, which has already been marked as</p> <p>5 Exhibit 13.</p> <p>6 (Exhibit 13 referred to.)</p> <p>7 BY MS. TORCHIANA:</p> <p>8 Q It will be behind tab 13. If you could</p> <p>9 turn to the exhibits, the first one is Exhibit A.</p> <p>10 There's a cover page that says Exhibit A?</p> <p>11 A Okay.</p> <p>12 Q So this letter, I can represent to you,</p> <p>13 is for Corinthian borrowers who assert job</p> <p>14 placement reclaims that do not meet the</p> <p>15 eligibility criteria for such a claim.</p> <p>16 So do you know who prepared this</p> <p>17 particular letter?</p> <p>18 A I do not.</p> <p>19 Q Okay. And do you know --</p> <p>20 A Regarding an individual. When you say</p> <p>21 "who," you're meaning an individual; correct?</p> <p>22 Q Or multiple individuals. Which people?</p> <p>23 A So what I -- what I would say, just to</p> <p>24 be clear, on none of the letters will I be able to</p> <p>25 tell you what individual put pen to paper and</p>
<p style="text-align: right;">Page 175 Page</p> <p>1 don't believe I could tell you exactly when the</p> <p>2 process began.</p> <p>3 Q Okay. We'll -- we'll go through each</p> <p>4 one and you can tell me when you think the</p> <p>5 drafting of that specific letter began.</p> <p>6 And -- and do you know how -- how long</p> <p>7 it took to develop these letters?</p> <p>8 A I do not.</p> <p>9 Q Okay. And in terms of who approved</p> <p>10 them, it sounds like that was Diane Auer Jones?</p> <p>11 A The process --</p> <p>12 Q Is that right?</p> <p>13 A Yeah, what I would -- what I would say,</p> <p>14 ma'am, is the approval process involves the policy</p> <p>15 element, people that could review -- could require</p> <p>16 review from the Office of General Counsel, and for</p> <p>17 it to go through the Office of the Under</p> <p>18 Secretary.</p> <p>19 As I stated earlier, I can't tell you</p> <p>20 their internal protocols, if the under secretary,</p> <p>21 Diane Jones, approved each particular letter. But</p> <p>22 I could tell you that the Office of the Under</p> <p>23 Secretary would have been involved in the approval</p> <p>24 of those letters.</p> <p>25 Q Do you have a sense of how many drafts</p>	<p style="text-align: right;">Page 177 Page</p> <p>1 drafted the letter, but I can tell you from an</p> <p>2 organizational perspective where those kinds of</p> <p>3 things happen and where -- and where they come</p> <p>4 from.</p> <p>5 So if -- if that's the answer to who,</p> <p>6 you know, that's -- that's what I know about --</p> <p>7 about the letters and drafting them.</p> <p>8 Q Okay. Sure. So --</p> <p>9 A So if you ask me that question about</p> <p>10 this particular letter, I would say it is most</p> <p>11 likely the borrower defense unit and the policy</p> <p>12 liaison working together collaboratively to</p> <p>13 bring -- to come together with the draft and then</p> <p>14 putting it through the staffing process to be seen</p> <p>15 by the policy element of the Department of</p> <p>16 Education.</p> <p>17 Q Okay. And do you know if this form is</p> <p>18 still being used?</p> <p>19 A (Witness reviews document.)</p> <p>20 I don't know if this paper form is</p> <p>21 still being used, but there is likely a version of</p> <p>22 this form still being used.</p> <p>23 So if you mean this exact form produced</p> <p>24 in this exact way, I don't think so. I think that</p> <p>25 hopefully it's been digitized with the other forms</p>

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<p style="text-align: right;">Page 178 Page</p> <p>1 and being used in that manner.</p> <p>2 Q But is it still going out -- is this</p> <p>3 format of the letter still going out to borrowers?</p> <p>4 Obviously filled in with relevant information for</p> <p>5 the borrower specifically.</p> <p>6 A I -- I believe in general that is true,</p> <p>7 but there -- there may be -- you said format, so</p> <p>8 it doesn't mean it's the exact same letter. But</p> <p>9 if you mean the general format is still continuing</p> <p>10 on today, I don't believe we're sending out</p> <p>11 notifications.</p> <p>12 But if we were sending out</p> <p>13 notifications, if that's your question, would this</p> <p>14 form be in presence. I believe in some form, it</p> <p>15 would be.</p> <p>16 Q Okay. Now could we turn to Exhibit B,</p> <p>17 which is a couple of pages down.</p> <p>18 A Okay.</p> <p>19 Q And this is for current payment</p> <p>20 borrowers who assert the claim other than job</p> <p>21 placement rights -- or other than job placement</p> <p>22 reclaim.</p> <p>23 And if you turn to -- let's see.</p> <p>24 Sorry. If you turn to the bottom of page 2, it</p> <p>25 says, In order to have a successful borrower</p>	<p style="text-align: right;">Page 180 Page</p> <p>1 that common evidence is just that; it is things</p> <p>2 that have been determined, like a program review,</p> <p>3 where a finding was found against the school and</p> <p>4 determined to be validated.</p> <p>5 And, so, it's available for the</p> <p>6 attorney doing the adjudication to use as a source</p> <p>7 of evidence. That could also be Attorney General</p> <p>8 determinations or other determinations made</p> <p>9 against a school where -- where if even if the</p> <p>10 borrower doesn't submit it themselves, it's</p> <p>11 common -- commonly known and available to be</p> <p>12 utilized.</p> <p>13 That's what I believe we -- we mean</p> <p>14 when we use the term.</p> <p>15 Q Okay. And do you know if --</p> <p>16 A I just want to clarify that -- that</p> <p>17 last -- what I just -- what I just said, I'm</p> <p>18 giving you my understanding of it as a lay -- from</p> <p>19 a layman's perspective. That's not something I</p> <p>20 practice against a borrower defense claim because</p> <p>21 I don't do it. So I'm just telling you from a</p> <p>22 layman's perspective and management of borrower</p> <p>23 defense, the team, that's how the attorneys have</p> <p>24 generally explained it.</p> <p>25 Q Right.</p>
<p style="text-align: right;">Page 179 Page</p> <p>1 defense claim based on ED's CCI findings, you must</p> <p>2 have enrolled in one of the covered programs</p> <p>3 during a listed time period.</p> <p>4 So do you -- do you know if it's</p> <p>5 possible for a borrower defense claimant to have a</p> <p>6 successful claim if he enrolled in CCI outside of</p> <p>7 the listed time period?</p> <p>8 A There may be some other form of --</p> <p>9 of -- of damage or concern for the borrower, so</p> <p>10 I -- I wouldn't want to make a blanket statement</p> <p>11 that said there is nothing. I -- I would say it</p> <p>12 just depends on how that attorney would adjudicate</p> <p>13 the claim. I don't -- it depends on the</p> <p>14 circumstances.</p> <p>15 Q Okay. And then if you could turn to</p> <p>16 Exhibit C, and this form is for non-Corinthian</p> <p>17 borrowers who attended a school for which the</p> <p>18 department does not have any common evidence in</p> <p>19 its possession.</p> <p>20 And so do you -- what do you understand</p> <p>21 as -- what is common evidence?</p> <p>22 A As I understand it, and I just want to</p> <p>23 provide the context that I -- I don't adjudicate</p> <p>24 borrower defense cases, so I'm not an attorney.</p> <p>25 But my general understanding of this is</p>	<p style="text-align: right;">Page 181 Page</p> <p>1 And if there's no common evidence, can</p> <p>2 a borrower's claim be granted?</p> <p>3 A So in -- in general and for</p> <p>4 generalities, can it be? I would say every --</p> <p>5 every claim is adjudicated on its own merit as</p> <p>6 stated earlier, and it just depends on what other</p> <p>7 things there are and what other things have been</p> <p>8 brought forth.</p> <p>9 And, so, I would never say it</p> <p>10 absolutely could not be or absolutely could be. I</p> <p>11 could say that every -- every claim is adjudicated</p> <p>12 based on its own merit.</p> <p>13 Q Okay. And do you know whether since</p> <p>14 you've started has any claim been granted for a</p> <p>15 borrower who attended a school for which there is</p> <p>16 no common evidence?</p> <p>17 A I don't know.</p> <p>18 Q Okay. And if we could turn to the last</p> <p>19 form, form D, this form is for non-Corinthian</p> <p>20 borrowers who attended a school for which the</p> <p>21 department does have common evidence.</p> <p>22 Could you tell me when form D was</p> <p>23 developed?</p> <p>24 A I -- I could not tell you exactly when</p> <p>25 it was developed.</p>

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<p style="text-align: right;">Page 182 Page</p> <p>1 Q Do you know roughly when it was</p> <p>2 developed?</p> <p>3 A I -- I do not. I think it evolved over</p> <p>4 time in the -- in the BD unit and possibly liaison</p> <p>5 as circumstances dictated that an additional type</p> <p>6 of form would be needed.</p> <p>7 Q Okay. And what circumstances dictated</p> <p>8 that an additional form would be needed?</p> <p>9 A I don't know exactly other -- other</p> <p>10 than these -- these forms are created based on</p> <p>11 what is seen in the claims that are being</p> <p>12 adjusted.</p> <p>13 So if you see a circumstance occur</p> <p>14 enough and you believe that claimants need to be</p> <p>15 able to have certain information in order to file</p> <p>16 a particular claim, you might adjust or make sure</p> <p>17 you design a form with that in mind.</p> <p>18 Q Okay. And, again, for this form D, who</p> <p>19 designed the form?</p> <p>20 A So, again, I would say -- I don't know</p> <p>21 exactly who, other than forms are a collaboration</p> <p>22 between our liaison office and our borrower</p> <p>23 defense office. That's how forms are drafted and</p> <p>24 then approved through our policy element at the</p> <p>25 Department of Education.</p>	<p style="text-align: right;">Page 184 Page</p> <p>1 which an application was decided would be if it</p> <p>2 was decided under the 1995 regs?</p> <p>3 A If the appropriate state law?</p> <p>4 Q Yes.</p> <p>5 If -- if a borrower's application was</p> <p>6 decided according to state law, do you think that</p> <p>7 law would be stated under the applicable law</p> <p>8 section?</p> <p>9 A Yeah, that would -- exactly where to</p> <p>10 put something on the form would not be something</p> <p>11 I'd be prepared to opine on. Exactly where to put</p> <p>12 it on the form, I don't know. I would leave it to</p> <p>13 those in charge with that to -- to tell me --</p> <p>14 Q Okay.</p> <p>15 A -- the laws.</p> <p>16 Q Do you think it would be somewhere on</p> <p>17 the form?</p> <p>18 A I don't know. I would -- I would look</p> <p>19 to my attorneys to tell me if state law needed to</p> <p>20 be on the form or not. And if -- and if they</p> <p>21 believe that it would be, it would need to then be</p> <p>22 put through that staffing process I described</p> <p>23 earlier to make sure those in charge of the forms</p> <p>24 and policy elements came to an agreement that, in</p> <p>25 fact, it should be.</p>
<p style="text-align: right;">Page 183 Page</p> <p>1 Q Okay. And did you have to approve this</p> <p>2 form before it started being used?</p> <p>3 A I don't necessarily approve each form.</p> <p>4 They go -- they go through the staffing process.</p> <p>5 The approval of a form is the -- is -- is the</p> <p>6 policy element of what we do because the forms</p> <p>7 represent an extension of policy.</p> <p>8 Q Okay. So would you say the denial</p> <p>9 forms are -- they're under policy?</p> <p>10 MR. HANCOCK: Objection: asked and</p> <p>11 answered.</p> <p>12 BY MS. TORCHIANA:</p> <p>13 Q Okay. Are the denial forms part of</p> <p>14 operations?</p> <p>15 A So what I -- what I would say is the</p> <p>16 drafting of policy forms like the ones that we</p> <p>17 just went through, A through -- through D, begins</p> <p>18 inside of Federal Student Aid.</p> <p>19 So it -- it begins as part of</p> <p>20 operations, but the final form and the decision on</p> <p>21 what the form -- that the form is appropriate is a</p> <p>22 policy decision.</p> <p>23 Q Okay. So if you look at form D, it</p> <p>24 says, applicable law, and is this somewhere where</p> <p>25 you would expect the state law standard under</p>	<p style="text-align: right;">Page 185 Page</p> <p>1 Q Okay. And if you -- if you go to the</p> <p>2 next page, the section it says, What if I do not</p> <p>3 agree with this decision?</p> <p>4 A Yeah.</p> <p>5 Q And then it says, number three is,</p> <p>6 Identify and provide any evidence that</p> <p>7 demonstrates why ED should approve your borrower</p> <p>8 defense repayment claim.</p> <p>9 And, you know, you noted actually</p> <p>10 earlier in your declaration -- and we can turn</p> <p>11 back to it if you want to see that, but you say</p> <p>12 that FSA will consider any evidence under</p> <p>13 reconsideration which includes both new evidence</p> <p>14 and evidence already submitted.</p> <p>15 When was the choice made to consider</p> <p>16 any evidence as opposed to new evidence?</p> <p>17 A So I don't -- I don't know the exact</p> <p>18 point -- point in time when that became a matter</p> <p>19 of policy and certainly a matter of our forms. I</p> <p>20 know that it is today, but exactly how -- how long</p> <p>21 ago that was determined, I -- I don't know.</p> <p>22 Q Okay. And would you say that was a</p> <p>23 policy decision?</p> <p>24 A I'm -- I would -- I would say that</p> <p>25 those kind of elements on a form, like, time</p>

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<p style="text-align: right;">Page 186 Page</p> <p>1 periods and what's allowed are policy decisions.</p> <p>2 Q Okay. And if a borrower received a</p> <p>3 letter, for instance, where the only reason for</p> <p>4 denial under each allegation was insufficient</p> <p>5 evidence, how would you expect them to reply?</p> <p>6 MR. HANCOCK: Objection: calls for</p> <p>7 speculation.</p> <p>8 THE WITNESS: I'm not -- I'm not</p> <p>9 certain, ma'am, on how they would reply. So for</p> <p>10 an individual, how they would react to that; is</p> <p>11 that what you're asking me?</p> <p>12 BY MS. TORCHIANA:</p> <p>13 Q If they were to submit a request for</p> <p>14 reconsideration but the only thing that their</p> <p>15 denial letter said was insufficient evidence, what</p> <p>16 would you expect them to submit?</p> <p>17 MR. HANCOCK: Objection: calls for</p> <p>18 speculation.</p> <p>19 THE WITNESS: So I don't -- I don't</p> <p>20 believe I'm understanding your question. Are you</p> <p>21 asking me to kind of assume what -- what a</p> <p>22 borrower should do if they get that letter? What</p> <p>23 does a borrower do if they have a question; is</p> <p>24 that -- or -- they don't --</p> <p>25 BY MS. TORCHIANA:</p>	<p style="text-align: right;">Page 188 Page</p> <p>1 don't know -- I can't tell you if any have been</p> <p>2 granted or where those that have come in stand</p> <p>3 right now today.</p> <p>4 Q Okay. And how many have come in</p> <p>5 approximately?</p> <p>6 A I don't know. It's a dynamic process</p> <p>7 where, you know, things come in each day and</p> <p>8 they're sorted out, and at some point when we do</p> <p>9 our next update, if some new have come in, I</p> <p>10 probably would see it visible through our metrics</p> <p>11 or be told, but right now today I couldn't</p> <p>12 speculate on how many would come in.</p> <p>13 Q Okay. When was the last update -- when</p> <p>14 did you receive the last update that had those</p> <p>15 numbers?</p> <p>16 A I believe it was at end-of-November</p> <p>17 time frame.</p> <p>18 Q Okay. And at the end of November, do</p> <p>19 you remember roughly how many requests for</p> <p>20 reconsideration had been received?</p> <p>21 A I do not believe it was that many in</p> <p>22 relative terms, meaning given the number of claims</p> <p>23 that we do. But I don't remember exactly how</p> <p>24 many.</p> <p>25 Q And again, these are -- these are the</p>
<p style="text-align: right;">Page 187 Page</p> <p>1 Q No.</p> <p>2 A -- know what to do or --</p> <p>3 Q We'll get into this more -- we'll get</p> <p>4 into a specific letter later, but -- but here you</p> <p>5 say, Identify and provide any evidence that</p> <p>6 demonstrates why ED should approve your borrower</p> <p>7 defense to repayment claim. And let's say that</p> <p>8 the reason someone got the denial was just</p> <p>9 insufficient evidence.</p> <p>10 How do you think -- what would they put</p> <p>11 in their request for reconsideration?</p> <p>12 MR. HANCOCK: Objection: calls for</p> <p>13 speculation.</p> <p>14 THE WITNESS: I -- I don't know. I</p> <p>15 don't think I can answer your -- I don't think I</p> <p>16 can answer your question.</p> <p>17 BY MS. TORCHIANA:</p> <p>18 Q Okay. Okay. And do you know -- have</p> <p>19 any requests for reconsideration been granted that</p> <p>20 you know of?</p> <p>21 A One second, please.</p> <p>22 (Witness reviews document.)</p> <p>23 I don't know if any have been -- have</p> <p>24 been granted. I only know that some have -- have</p> <p>25 come in through -- through the process. I -- I</p>	<p style="text-align: right;">Page 189 Page</p> <p>1 weekly performance metrics we discussed before,</p> <p>2 correct, that have these numbers?</p> <p>3 A They -- they are the metrics for</p> <p>4 borrower defense, correct.</p> <p>5 MS. TORCHIANA: Okay. And I think I've</p> <p>6 already asked, but I think we will be asking for</p> <p>7 those to be produced.</p> <p>8 BY MS. TORCHIANA:</p> <p>9 Q Okay. Do you know if any requests for</p> <p>10 reconsideration have been denied?</p> <p>11 A As I said earlier, I -- either way, I</p> <p>12 don't know in the process if we have gotten around</p> <p>13 to decisions one way or the other on those yet.</p> <p>14 Q Okay.</p> <p>15 MS. TORCHIANA: Okay. Why don't we</p> <p>16 take a ten-minute break if that's okay with</p> <p>17 everyone.</p> <p>18 THE WITNESS: Okay.</p> <p>19 MR. HANCOCK: That's fine.</p> <p>20 THE VIDEOGRAPHER: Okay. We are now</p> <p>21 going off the record. The time is 20:41 UTC time.</p> <p>22 (Recess -- 3:41 p.m.)</p> <p>23 (After recess -- 3:55 p.m.)</p> <p>24 THE VIDEOGRAPHER: We're now back on</p> <p>25 the record. The time is 20:55 UTC time.</p>

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<p style="text-align: right;">Page 226 Page</p> <p>1 MR. HANCOCK: Objection. It exceeds</p> <p>2 the scope of discovery.</p> <p>3 THE WITNESS: I don't know, ma'am.</p> <p>4 BY MS. TORCHIANA:</p> <p>5 Q You don't know.</p> <p>6 Okay. Do you think knowing that</p> <p>7 information would have been relevant to setting</p> <p>8 your -- your target metrics for the number of</p> <p>9 adjudications going out?</p> <p>10 A Just to be clear, I said I didn't know.</p> <p>11 I didn't say that there wasn't someone who may</p> <p>12 have known and may have been a part of that and it</p> <p>13 may have been a part of the setting and the</p> <p>14 establishing of metrics.</p> <p>15 But if you are assuming the premise</p> <p>16 that it wasn't used in that discussion, I can't</p> <p>17 validate that that premise is correct. I could</p> <p>18 only say that I don't know. You know, I couldn't</p> <p>19 tell you which ones were in and which ones were</p> <p>20 out at that time. I couldn't tell you that the</p> <p>21 subject matter experts and the technicians and the</p> <p>22 policy liaison folks and the folks that are inside</p> <p>23 the bowels of the organization, they may have been</p> <p>24 familiar with that, and it could have been a part</p> <p>25 of their deliberations, but I don't know</p>	<p style="text-align: right;">Page 228 Page</p> <p>1 full -- through this full speech. But if you --</p> <p>2 by familiar, do you mean if I know when this was</p> <p>3 given, the title that's up at the top and --</p> <p>4 Q Were you there?</p> <p>5 A It's all -- it was a virtual</p> <p>6 conference.</p> <p>7 Q Okay. Were you listening -- did you --</p> <p>8 did you hear this speech?</p> <p>9 A I was virtually there. I -- I was -- I</p> <p>10 was on the -- on the platform, I think would be</p> <p>11 the way to -- to explain it. And I did the</p> <p>12 introduction, and I listened while the speech was</p> <p>13 given.</p> <p>14 Q Okay.</p> <p>15 A So if -- if that -- if that is what you</p> <p>16 mean by am I familiar with it, in that regard, I</p> <p>17 am. But if -- but if you mean have I read this</p> <p>18 speech, the script that was provided here in the</p> <p>19 information that you sent me, then the answer to</p> <p>20 that is I have not.</p> <p>21 Q Okay. And could you go to page 3 of 6?</p> <p>22 It's in small -- it's on the bottom right-hand</p> <p>23 side of the page.</p> <p>24 A Yes, ma'am.</p> <p>25 Q And could you read me the paragraph</p>
<p style="text-align: right;">Page 227 Page</p> <p>1 personally.</p> <p>2 Q Okay. And that 150,000 number of</p> <p>3 targeted adjudications for borrower defense</p> <p>4 applications, by adjudications, is that decisions</p> <p>5 that have been processed and sent to borrowers, or</p> <p>6 what do you consider an adjudicated decision that</p> <p>7 counts towards that 150,000?</p> <p>8 A So when I look at the metric, I take a</p> <p>9 holistic look at it. And so to get a check in</p> <p>10 that column, I'm looking for the full circle,</p> <p>11 which is what we have called today Step 1 and Step</p> <p>12 2, to have been completed.</p> <p>13 Q Okay. Okay. I have a couple more</p> <p>14 things to go over, and then -- so -- so could you</p> <p>15 turn to tab 33?</p> <p>16 MS. TORCHIANA: And could we mark that</p> <p>17 as Exhibit 30?</p> <p>18 (Deposition Exhibit 30 was marked for</p> <p>19 identification and attached to the transcript.)</p> <p>20 BY MS. TORCHIANA:</p> <p>21 Q And are you familiar with this speech</p> <p>22 by Secretary DeVos?</p> <p>23 A (Witness reviews document.)</p> <p>24 I'm familiar with the event. The --</p> <p>25 the speech itself, I have not read through this</p>	<p style="text-align: right;">Page 229 Page</p> <p>1 that starts with, Still more advance?</p> <p>2 A Still more advance the truly insidious</p> <p>3 notion of government gift giving. We've heard</p> <p>4 shrill calls to cancel, to forgive, to make it all</p> <p>5 free. Any innocuous label out there can't</p> <p>6 obfuscate what it really is: wrong.</p> <p>7 Q Okay. And what do you -- what did you</p> <p>8 understand this to mean, or what do you understand</p> <p>9 this to mean?</p> <p>10 MR. HANCOCK: Objection: exceeds the</p> <p>11 scope of discovery. What's the relevance of this</p> <p>12 to the court's three categories?</p> <p>13 BY MS. TORCHIANA:</p> <p>14 Q You can still answer.</p> <p>15 A You're asking me what do I believe that</p> <p>16 statement is?</p> <p>17 Q Yeah, what do you understand this</p> <p>18 statement to mean.</p> <p>19 MR. HANCOCK: Calls for speculation.</p> <p>20 THE WITNESS: I am -- can you give me a</p> <p>21 second to read it again?</p> <p>22 BY MS. TORCHIANA:</p> <p>23 Q Yeah.</p> <p>24 A (Witness reviews document.)</p> <p>25 I don't know what it means. It was --</p>

December 15, 2020

230 to 233

<p style="text-align: right;">Page 230 Page</p> <p>1 it was obviously written by a speechwriter. Those</p> <p>2 are not -- those are not terms I use. I don't --</p> <p>3 I don't know what it means.</p> <p>4 Q Okay. And -- sure.</p> <p>5 And have you ever heard Ms. DeVos in</p> <p>6 your private meetings with her express these same</p> <p>7 sentiments?</p> <p>8 MR. HANCOCK: Object to the scope of</p> <p>9 discovery, and I'm going to instruct the witness</p> <p>10 not to answer.</p> <p>11 MS. TORCHIANA: Okay. Could -- could</p> <p>12 we go off the record?</p> <p>13 MR. HANCOCK: Sure.</p> <p>14 MS. TORCHIANA: I think that's</p> <p>15 exactly --</p> <p>16 THE COURT REPORTER: Wait, wait, wait.</p> <p>17 Wait a minute. Wait a minute. You're not off.</p> <p>18 He's got to read you off.</p> <p>19 MS. TORCHIANA: I'm sorry.</p> <p>20 THE COURT REPORTER: That's okay.</p> <p>21 THE VIDEOGRAPHER: We're going off the</p> <p>22 record; right?</p> <p>23 THE COURT REPORTER: Yes.</p> <p>24 MS. TORCHIANA: It seems to be --</p> <p>25 THE COURT REPORTER: Yes.</p>	<p style="text-align: right;">Page 232 Page</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MS. TORCHIANA:</p> <p>3 Q Okay. And are you familiar with this</p> <p>4 PowerPoint? Have you seen it before?</p> <p>5 A (Witness reviews document.)</p> <p>6 So, ma'am, I believe I have seen it</p> <p>7 before.</p> <p>8 Q Okay. So when did you see it?</p> <p>9 A I cannot -- I cannot tell you when, but</p> <p>10 I believe in some of our staff at work and our</p> <p>11 updates, I have seen these charts before.</p> <p>12 Q Okay. And in what context would you</p> <p>13 have seen it?</p> <p>14 A Updates from the borrower defense team,</p> <p>15 preparing for updates, those kinds of things.</p> <p>16 Q Okay. And did you receive regular</p> <p>17 updates from the borrower defense team?</p> <p>18 A So I don't know. I would say the</p> <p>19 updates from the borrower defense team I receive</p> <p>20 vary, as I stated earlier. It just depends on</p> <p>21 what's going on, you know, what needs to be</p> <p>22 discussed, and I'm not sure if you would consider</p> <p>23 that regular or not.</p> <p>24 Q Okay. And this presentation is from</p> <p>25 August 21st, 2019. And if you turn to page 2, it</p>
<p style="text-align: right;">Page 231 Page</p> <p>1 Wait a minute.</p> <p>2 MS. TORCHIANA: -- relevant --</p> <p>3 THE COURT REPORTER: Wait a minute.</p> <p>4 MS. TORCHIANA: -- to point --</p> <p>5 THE COURT REPORTER: No. He asked the</p> <p>6 question.</p> <p>7 Dan, yes, please take us off the</p> <p>8 record.</p> <p>9 THE VIDEOGRAPHER: Thank you. We're</p> <p>10 now off the record at ten -- 23:07 UTC.</p> <p>11 (Recess -- 5:07 p.m.)</p> <p>12 (After recess -- 5:09 p.m.)</p> <p>13 THE VIDEOGRAPHER: We're now back on</p> <p>14 the record. The time is 22:09 UTC time.</p> <p>15 BY MS. TORCHIANA:</p> <p>16 Q Okay. And, so, Mr. Brown, are you --</p> <p>17 are you declining to answer what you think this</p> <p>18 sentence means?</p> <p>19 A The answer is I don't know.</p> <p>20 Q You -- you don't know. Okay.</p> <p>21 Okay. Let's move on. Let's go to our</p> <p>22 final exhibit, and then we'll be done.</p> <p>23 Could you turn to Exhibit -- let's</p> <p>24 see -- Exhibit 12?</p> <p>25 (Exhibit 12 referred to.)</p>	<p style="text-align: right;">Page 233 Page</p> <p>1 says, Total borrower defense applications as of</p> <p>2 the week ending August 6th, 2019.</p> <p>3 Do you know whether these presentations</p> <p>4 were given weekly or . . .</p> <p>5 A (Witness reviews document.)</p> <p>6 No, I can't tell you that they were</p> <p>7 given weekly.</p> <p>8 Q Okay. And were you -- was this</p> <p>9 presentation given to you, or in what context did</p> <p>10 you see this PowerPoint?</p> <p>11 A Because these -- because I have seen, I</p> <p>12 think, most of these slides at different times and</p> <p>13 perhaps some more than once over time. Your</p> <p>14 particular question of when was this presentation</p> <p>15 given to me, I don't -- I don't know that date. I</p> <p>16 just can say for sure that I have seen the slides</p> <p>17 that you are talking about.</p> <p>18 Q Okay.</p> <p>19 A It's not all at the same time is my</p> <p>20 point. Different things, different types,</p> <p>21 different updates.</p> <p>22 Q Okay. And the second line says, 38,700</p> <p>23 applications have been adjudicated but not yet</p> <p>24 processed.</p> <p>25 As -- as we've been describing it,</p>